

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-198961**DATE:** October 4, 1984**MATTER OF:** Student-dependent travel of members
of the uniformed services.**DIGEST:**

The decision holding that a member of a uniformed service is not entitled to reimbursement for the travel of his college student-dependent from the United States to the new overseas duty station as dependent travel incident to the member's permanent change of station when the travel is performed only for a brief visit, is reaffirmed. Enactment of legislation authorizing annual round-trip transportation for student-dependents of members stationed outside the United States and the entitlements of civilian employees of the Government in similar circumstances do not provide evidence that Congress intended to change the longstanding interpretation that dependent travel incident to a change of permanent station must be for the purpose of establishing a residence in order to be considered an obligation of the Government.

We are asked to reconsider our decision, Colonel James Roche, USAF, B-198961, March 18, 1981,^{1/}in which we held that a member of a uniformed service is not entitled to reimbursement for the travel of his college student-dependent from the United States to the member's new overseas duty station as dependent travel incident to the member's permanent change of station, when the travel is performed only for a brief visit. For the following reasons we continue to hold that such travel may not be performed as dependent travel incident to the member's permanent change of station.

^{1/} The reconsideration was requested by the Assistant Secretary of the Army (Manpower and Reserve Affairs) and was forwarded to us by the Per Diem, Travel and Transportation Allowance Committee. The matter has been assigned PDTATAC Control No. 84-3.

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I. Background

Under the provisions of 37 U.S.C. § 406(a)(1), a member of a uniformed service who is ordered to make a permanent change of station is entitled to the transportation expenses of his dependents. Under implementing regulations, dependent travel to a location where the dependent does not intend to establish a residence is not authorized. For example travel that is performed for the purpose of a visit is not authorized. Joint Travel Regulations, Vol. 1, para. M7000-13. However, travel is authorized in certain circumstances for dependents who establish a residence at other than the member's new duty station outside the United States. See 1 JTR para. M 7008-3.

In our decision 33 Comp. Gen 431 (1954), we traced the history of a member's entitlement to transportation for dependents incident to a permanent change of station from when it was first authorized as an obligation of the Government through the enactment of the Career Compensation Act of 1949, 63 Stat. 814, and regulations implementing that act. We pointed out in that decision that the various laws involved did not contemplate dependent travel for pleasure trips or visits or for any purpose other than a change of the dependent's residence in connection with the member's permanent change of station. Those provisions of the Career Compensation Act dealing with dependent travel are now codified at 37 U.S.C. § 406.

We have continued to construe the provisions of 37 U.S.C. § 406 and the regulations promulgated pursuant to that section, Chapter 7, 1 JTR, as not authorizing dependent travel at Government expense for travel other than to establish a residence. See Sergeant Gary B. Williams, USAF, B-150187, August 26, 1977. Additionally, we have specifically held that travel during a school break or recess to a member's new duty station overseas by a dependent who is attending an educational institution in the United States is not travel, at the time it is performed, for the purpose of the dependent establishing a residence with the member, but is more in the nature of a visit. See Major General Earl G. Peck, USAF, B-207834, December 9, 1982; Colonel James Roche, USAF, B-198961, March 18, 1981; and B-155344, January 15, 1965.

II. Request for Reconsideration

The request for reconsideration does not present any new information concerning our specific decision in Colonel James Roache, USAF. Instead it takes issue with the basic approach followed in that decision. The request takes the view that the residence of a dependent student of a military member should always be considered as with the family. Therefore, the first trip made by a student-dependent to his member-parent's new overseas station, even if it is delayed after the member-parent's travel and is during a school break or recess, should be considered as establishing a residence with the member-parent.

The request points out that this view is supported by legislation authorizing certain travel allowances for members stationed outside the United States who have dependents attending either Department of Defense schools outside the United States (37 U.S.C. § 429) or have dependents attending educational institutions in the United States (37 U.S.C. § 430). Additionally, it states that these provisions were enacted to provide members of the uniformed services with benefits similar to those authorized for civilian employees of the Government overseas and that the limitations on dependent travel incident to a change of duty station applicable to members of the uniformed services do not apply to civilian employees of the Government.

III. Analysis and Conclusions

The statutory and regulatory provisions discussed in Part I clearly do not authorize dependent travel incident to a permanent change of station for purposes other than establishing a residence at the new duty station. The purpose of travel in this context involves a question of intent that must be determined in light of the particular facts and circumstances. Since the question is one of intent in each case, we cannot agree with the view expressed in the request for reconsideration that the residence of a student-dependent should always be regarded as with the member-parent.

Our decisions in this area reflect a strong inference that travel performed by a student-dependent between the dependent's school and the parent's home during a school

break is intended for a visit rather than to establish a permanent residence. At the same time, the decisions recognize that the inference that short stays are only visits may be rebutted by additional evidence. See e.g., B-182440, November 4, 1975; B-174937, January 2, 1973.^{2/} We believe that this approach is more realistic, and more in keeping with the statutory and regulatory requirements, than the rule proposed by the request for reconsideration of automatically treating the student-dependent's first trip to the overseas station as being for the purpose of establishing a residence at that station.

As the request points out, the Secretary of Defense is authorized under 37 U.S.C. § 429 to provide a travel allowance to uniformed service members stationed overseas for dependent students enrolled in 5-day and 7-day Department of Defense dormitory schools. Also, section 430 of title 37, United States Code, authorizes members of the uniformed services to receive travel allowances for an annual round trip for their student dependents under 23 years of age between the secondary school or college attended in the United States and the member's overseas duty station. However, the travel allowance may not be paid to a member if the dependent is eligible to attend a Department of Defense secondary school that is located at or in the vicinity of the member's duty station. This section was added by Pub. L. 98-94, 910 97 Stat. 639, (1983).

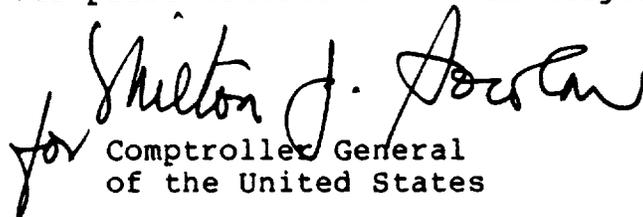
The legislative history of Pub. L. No. 98-94 indicates that the legislation was enacted to eliminate the then existing disparity between members of the uniformed services and civilian employees. Prior to the enactment of 37 U.S.C. § 430, Foreign Service personnel and Federal civilian employees stationed overseas were authorized reimbursement for an annual round trip for student dependents attending school in the United States to their parents' location and return. No similar authority existed at that time for student dependents of military personnel stationed overseas. See Standardized Regulations (Government Civilians, Foreign Areas) para. 282, 284 (Sept. 4, 1983); H.R. Rep. 107, 98th Cong., 1st Sess. 211 (1983); S. Rep. No. 174, 98th Cong., 1st Sess. 223 (1983).

^{2/} While the cited decisions do not deal specifically with travel by students, they are analogous.

We find nothing in the legislative history of these statutes evidencing an intent on the part of the Congress to change the longstanding rule with regard to dependent travel incident to the member's permanent change of station. That is, the dependent's travel must be accomplished for the purpose of establishing a residence in order for the Government to be obligated for it.

Finally, the request suggests that, contrary to the approach followed for members of the uniformed services, student dependents of civilian employees are allowed delayed permanent change of station travel during a school break. The travel and transportation entitlements of civilian employees of the Government are governed by entirely distinct and separate laws and regulations. Thus, the civilian entitlements may differ in similar circumstances from entitlements of members of the uniformed services. In any event, we find no indication of a difference in approach here. The only evidence of a difference cited by the request is section 284 of the State Department Standardized Regulations (Government civilians, Foreign areas). However, this regulation addresses eligibility requirements for education travel; it has no apparent relevance to permanent change of station travel.

Accordingly, we affirm our holding in Colonel James Roche, USAF, B-198691, March 18, 1981, that travel by his student dependent to his new duty station with intention of returning to school was not travel by a dependent for the purpose of establishing a residence incident to the member's permanent change of station and, may not be considered an obligation of the Government. We also adhere to the principles applied in our prior decisions on this subject.

for 
Comptroller General
of the United States